

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Insight Technology Inc.

v.

Civil No. 04-cv-74-JD

SureFire, LLC

PROCEDURAL ORDER

Insight Technology, Inc. has filed a motion in limine to preclude SureFire, LLC from raising certain non-infringement theories at trial. Among the challenged theories is SureFire's contention that its accused products, the X200 and X300 Weapon Lights, do not meet the "structural member extending upward" limitation of the asserted claims. Insight contends that the "structural member" theory "is not supported by the plain language of claim 1, nor by any claim construction ruling by this Court." Doc. no. 246-2 at 3.

SureFire first raised the issue as to whether "structural members extending upward" must be integral to the attachment housing in its objection to Insight's motion for summary judgment. The court did not reach the issue because the motion was decided on other grounds. Insight's motion in limine, challenging SureFire's theory, focuses on a claim construction question.

While Insight argues that the asserted claims of the '901 patent do not include a limitation that the "structural members" must be part of the housing, SureFire interprets the phrase "structural member extending upward from a [] side of the housing" to mean that the member must be an integral part of the housing.

The court has reviewed Claim 1 of the '901 patent, where the disputed phrase is used, along with the patent specification, and has determined that further briefing on this claim construction issue is necessary. The court notes that one embodiment of the invention is described in the specification to have "mounting members" rather than "structural members" and requests the parties to include a discussion of the relevance, if any, this may have in construing the term at issue. See '901 patent, col. 3, l. 67; col. 4, l. 4.

The claim construction issue must be resolved prior to trial.

Conclusion

Because of the time required for briefing and deciding the claim construction issue, counsel are placed on notice that the start of the trial may have to be delayed.

The parties shall file claim construction briefs, addressing the meaning of "structural member extending upward from a[] side of the housing" **on or before 5:00 p.m. on October 14, 2009.** A response to the opposing brief may be filed **on or before 5:00 p.m. on October 16, 2009.**

SO ORDERED.



Joseph A. DiClerico, Jr.
United States District Judge

October 7, 2009

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